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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,148	10/21/2005	Olivier Breguet	NITROS P174US	3255
20210	7590	04/30/2009	EXAMINER	
DAVIS & BUJOLD, P.L.L.C.			EDDE, HEIDI MARIE	
112 PLEASANT STREET				
CONCORD, NH 03301			ART UNIT	PAPER NUMBER
			3732	
			MAIL DATE	DELIVERY MODE
			04/30/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/554,148	BREGUET, OLIVIER
	<b>Examiner</b>	<b>Art Unit</b>
	HEIDI M. EIDE	3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 February 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 12-18,20-26,28-30,32 and 33 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 12-18,20-26,28-30,32 and 33 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 20, 2009 has been entered.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 15-18, 20-26, 28-30 and 32-33 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Each of the independent claims have been amended to include the limitation "a combined axial length of the distal region, the central region and the proximal region is longer than an axial length of the end section." The originally filed specification does not contain support for the combined axial length as claimed by the applicant. It is noted that in the drawings the end portion 11 is cut off by a line indicating that the end portion does not terminate at

the line, i.e. it keeps on going. Further “[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue” (See MPEP 2125).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15, 18, 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Senia et al. 2002/0182565 (Senia). Senia teaches a flexible dental instrument for use in drilling a root canal and the dental instrument being designed to be mechanically driven by an electric motor, the dental instrument being flexible and comprising an end section for mounting in a chuck driven by the electric motor, a proximal region adjacent to the end section, a central region extending from the proximal region and a distal region extending from the central region for guiding the instrument through the root canal terminating in a rounded tip and an envelope comprising the proximal region, the central region and the distal region and the envelope defining an axial length and having a generally inverted cone shape, with a widest portion of the envelope corresponding to the distal region and a smallest portion of the envelope corresponding to the proximal region wherein the dental instrument further comprises a junction region located between the proximal region and the end section, and the junction region comprises an area of the envelope has a minimum thickness which capable of breaking in the event

that a predetermined drive torque is applied to the envelope during use of the dental instrument, and a transition couples the junction region to the end section and the axial length of the envelope is longer than an axial length of the transition (see Appendix for further explanation) as illustrated in fig. 1 par. 5). As to claim 23 Senia teaches the dental instrument wherein the predetermined drive torque is capable of corresponding to a torque at which the distal region of the dental instrument breaks. The claimed limitations are met since the structure taught by Senia is capable of functioning as claimed.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Senia et al. 2002/0182565 (Senia) as applied to claim 15 above, and further in view of Berlin 5,876,202. Senia teaches the invention as discussed above, however does not teach a vertex angle in constant along the entire axial length of the envelope. Berlin teaches a vertex angle in constant along the entire axial length of the envelope as illustrated in fig. 4. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Senia in view of Berlin since it has been held that the configuration of the claimed envelope was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed envelope was significant (In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 IV B).

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Senia et al. 2002/0182565 (Senia) as applied to claim 15 above, and further in view of Johnson 6,074,209. Senia teaches the widest vortex angle corresponding to the distal region, a smallest vortex angle corresponding to the proximal region, and one or more intermediate vortex angles corresponding to the central region. Senia does not teach the envelope consists of several juxtaposed sections extending axially from one another and each of the section having a different vortex angle. Johnson teaches the envelope consists of several juxtaposed sections extending axially from one another and each of the section having a different vortex angle as illustrated in figs. 3-4. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Senia in view of Johnson in order to reduce the risk of stalling or locking up during manipulation or rotation of the file as taught by Johnson (col. 2, l1.48-50).

7. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Senia et al. 2002/0182565 (Senia) as applied to claim 15 above, and further in view of Corneo CH 513, 640. Senia does not teach the dental instrument wherein the area of the envelope which is designed to break consists of a reduced section adjacent the proximal region of the envelope. Corneo teaches the partial break consists of a portion of reduced section as illustrated in fig. 2. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Senia in view of Corneo in order to use a tool to pull out the file once separated from the end section as taught by Corneo (par. 5, ll. 5-7). Re claim 21, Senia does not teach the dental instrument

wherein the area of the envelope which is designed to break consists of a modification in one or more of type and structure of material used for the instrument. Corneo teaches the dental instrument wherein the area of the envelope which is designed to break consists of a modification in the structure of material as illustrated in fig. 2. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Senia in view of Corneo in order to use a tool to pull out the file once separated from the end section as taught by Corneo (par. 5, II. 5-7). Re claim 22, Senia does not teach the dental instrument wherein the area of the envelope which is designed to break consists of at least one peripheral notch formed in the junction region. Corneo teaches the dental instrument wherein the area of the envelope which is designed to break consists of at least one peripheral notch formed in the junction region as illustrated in fig. 2. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Senia in view of Corneo in order to use a tool to pull out the file once separated from the end section as taught by Corneo (par. 5, II. 5-7).

#### ***Response to Arguments***

Applicant's arguments; see the last paragraph on page 8, filed January 26, 2009, with respect to claims 25-26 and 28 have been fully considered and are persuasive. The rejection of claims 25-26 and 28 has been withdrawn.

#### ***Allowable Subject Matter***

Prior art has not been applied to claims 25-26, 28-30 and 32-33. The claims are currently allowable over the prior art, however, depending on the claim amendments

made to the claims to overcome the 112 1<sup>st</sup> paragraph new matter rejection, prior art may be applied. Prior art has been applied to claims 15-18 and 20-24. The claims were examined based on the added limitations are new matter, therefore the added limitations were not considered.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. EIDE whose telephone number is (571)270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**Heidi Eide  
Examiner  
Art Unit 3732**

**/John J Wilson/  
Primary Examiner  
Art Unit 3732**

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Art Unit: 3732

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/Heidi M Eide/  
Examiner, Art Unit 3732

4/28/2009

Appendix I

